

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PETER ALLAN GRANAAS,

Defendant-Appellant.

UNPUBLISHED

December 15, 2011

No. 299576

Oakland Circuit Court

LC No. 2008-224217-FH

Before: O'CONNELL, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Following a jury trial, defendant appeals as of right his conviction of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1). We affirm.

Defendant first argues that the prosecutor engaged in misconduct during closing argument by quoting testimony while displaying a transcript to the jury. According to defendant, these actions mischaracterized the source of quoted testimony. To preserve this issue, defendant was required to contemporaneously object to the alleged misconduct or to request a curative instruction. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). Defendant made no objection, nor did he request a curative instruction.

Defendant nonetheless maintains that this Court should deem the issue preserved on the ground that defense counsel could not see the prosecutor display the transcript. We disagree. The alleged mischaracterization of the evidence would have been apparent from the prosecutor's oral statements, to which defense counsel had an opportunity to object. We therefore review this unpreserved issue for plain error affecting defendant's substantial rights. *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008). Reversal is appropriate only if an error occurred and if the record indicates that defendant was actually innocent, or that the alleged misconduct "seriously affected the fairness, integrity, or public reputation of judicial proceedings" *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003).

To determine whether prosecutorial misconduct occurred, we review the prosecutor's statements as a whole and evaluate them in light of the defense's arguments. *Brown*, 279 Mich App at 135. "Generally, prosecutors are accorded great latitude regarding their arguments and conduct." *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (internal quotation and citation omitted). However, a prosecutor may not misrepresent the facts or argue facts not introduced into evidence. *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994).

Here, the prosecutor's closing argument was responsive to defendant's arguments and was a valid presentation of the facts in evidence. Defendant presented expert testimony to support a theory that defendant had lost consciousness during his interaction with the police. The prosecution's theory was that defendant pretended to lose consciousness to gain an advantage with the police. The competing theories presented a factual issue concerning whether defendant actually lost consciousness. Accordingly, the prosecutor could properly challenge the expert's testimony by arguing that defendant had acknowledged to police that the loss of consciousness was a ruse. The prosecutor argued, "we don't need to ask an expert, we don't even need to ask the officers what happened. Why? Because we have the defendant's own words." The prosecutor then attributed a quote to defendant to the effect that defendant said the police were stupid for not realizing that he had feigned the loss of consciousness. Although the prosecutor apparently referred to a transcript while attributing the quotation, there is no indication in the record that the prosecutor suggested or implied that the transcript was a deposition or was otherwise defendant's sworn testimony. Accordingly, we conclude that the prosecutor's closing argument did not amount to misconduct.

Even if the prosecutor's argument had amounted to misconduct, the trial court's instructions to the jury would have cured any plain error arising from the misconduct. See *People v Mesik*, 285 Mich App 535, 542; 775 NW2d 857 (2009). The trial court instructed the jury that the attorneys' statements were not evidence. In addition, the trial court specifically instructed the jury regarding the allegations of statements by defendant: "The prosecutor has introduced evidence of statements it claims [defendant] made. Before you may consider those statements against him you must first find that he actually made the statements. If you find he made the statements you may give them whatever weight you think they deserve." These instructions rendered the alleged error harmless.

Defendant next argues that the trial court erred in its response to a question that the jury submitted during deliberations. We review this preserved issue for abuse of discretion. See, e.g., *People v Wytcherly*, 176 Mich App 714, 716; 440 NW2d 107 (1989). The jury question at issue was: "During the trial was there a point where the Prosecutor read from the deposition that [defendant] said that he was faking the medical condition during his deposition?" The trial court responded that the jurors should use their collective memory.

The trial court's response was not an abuse of discretion. By refusing to answer the factual question posed by the jury, the trial court allowed the jury to perform its proper role of deciding the facts based on the evidence presented. See *People v Cooper*, 236 Mich App 643, 649; 601 NW2d 409 (1999); see generally *People v Johnson*, 460 Mich 720, 731 n 7; 597 NW2d 73 (1999).

Affirmed.

/s/ Peter D. O'Connell
/s/ Christopher M. Murray
/s/ Pat M. Donofrio